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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 MICHAEL SONNER,

Case No. 2:00-cv-01101-KJD-DJA

10 v.

Petitioner,

ORDER

11
12 WILLIAM GITTERE, et al.,

13 Respondents.
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15 On March 17, 2021, this court issued an indicative ruling on respondents' motion
16 for this court to reconsider its 2013 decision to reject their argument that several of
17 Sonner's habeas claims are barred by the doctrine of procedural default. ECF No. 280.
18 Agreeing that decision was incorrect, the court indicated that it would grant respondents'
19 motion (ECF No. 269) as to that issue if the Ninth Circuit elected to remand for that
20 purpose. *Id.* On May 3, 2021, the Ninth Circuit entered an order expanding its prior
21 limited remand to include the indicative ruling. ECF No. 281. In response, Sonner filed a
22 motion for this court to reconsider its reconsideration of its procedural default ruling.
23 ECF No. 282. For reasons that follow, that motion will be denied, but the court will allow
24 Sonner to attempt to demonstrate the procedural default should be excused.

25 At issue is whether the Nevada courts applied Nevada's timeliness bar (Nev.
26 Rev. Stat. § 34.726) to Sonner's claims in a way that rendered the bar inadequate to
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1 foreclose federal court review. Contrary to Sonner's arguments in support of
2 reconsideration, this court did not overlook the state district court's improper reliance on
3 this court's stay order (ECF No. 113) in adjudicating Sonner's state exhaustion petition.
4 And, even if it did, its misapprehension of the state district court proceedings would not
5 serve as grounds for reconsideration.

6 As noted in the March 17 order, the Nevada Supreme Court acknowledged that
7 the lower court may have erred by dismissing claims based on the notion that Sonner
8 was only permitted to raise the four unexhausted claims identified in this court's stay
9 order. ECF No. 138-6 at 7. Notwithstanding that possible error, the Nevada Supreme
10 Court concluded that the remaining claims were nonetheless barred by Nevada's
11 timeliness and successiveness rules and that Sonner had failed to demonstrate good
12 cause to excuse his default. *Id.*

13 This court's 2013 procedural default ruling in Sonner's favor was based on a
14 determination that Sonner had not been given sufficient opportunity, under Nevada law,
15 to make a good cause showing in state court. ECF No. 170 at 22. The court cited to the
16 holding *Lee v. Kemna*, 534 U.S. 362, 376 (2002), in support of its decision. *Id.* When
17 respondents moved for reconsideration, a closer reading of that case and its
18 distinguishing facts prompted this court to change its initial ruling. ECF No. 280 at 5-9.
19 Sonner has not presented a compelling argument for the court to restore its initial
20 decision.

21 Sonner does, however, provide a persuasive reason for allowing him to update
22 his arguments in support of excusing his procedural default. In particular, he notes that
23 the law governing cause and prejudice has changed in the nine years since the parties
24 briefed the issue. In addition, respondents do not object to supplemental briefing. Thus,
25 the court will allow it.

26 IT IS THEREFORE ORDERED that, in accordance with the Ninth Circuit's order
27 expanding the limited remand (ECF No. 281), respondents' motion for reconsideration
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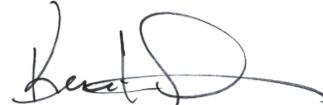
1 (ECF No. 269) is GRANTED in part. All of the claims in Sonner's operative federal
2 petition (ECF No. 96), except for Claims G, H, I, M1, M3, N, GG, II, PP4, TT2, TT10,
3 TT11, ZZ, GGG, HHH, and KKK, are barred from federal review by the procedural
4 default doctrine absent a showing of cause and prejudice or a fundamental miscarriage
5 of justice.

6 IT IS FURTHER ORDERED that Sonner's motion for reconsideration (ECF No.
7 282) is DENIED.

8 IT IS FURTHER ORDERED that Sonner shall have **60 days** from the date of
9 this order within which to file points and authorities in support of excusing the procedural
10 default of his claims. Respondents shall have **45 days** from the date Sonner files his
11 points and authorities to file a response. Sonner shall thereafter have **30 days** to file a
12 reply.

13 IT IS FURTHER ORDERED that the scheduling order entered October 2, 2019,
14 (ECF No. 259) is VACATED.

15 DATED THIS 24 day of June, 2021.



17 UNITED STATES DISTRICT JUDGE

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